

1 Matt Adamson  
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3 & LOMBARD, P.L.L.C.  
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Telephone: 206 292 1994  
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Hon. Marc Barreca  
Chapter 7  
Hearing Date: June 20, 2014  
Location: Seattle

7 UNITED STATES BANKRUPTCY COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 In Re: ) Case Number: 10-23826  
10 Michelle Catherine Merceri, )  
11 Debtor(s). )  
12  
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Motions in Limine were due no later than June 17, 2014. Dkt. 188. Debtor's motion was filed on June 19.

Mr. Stern's May 22, 2014 email is not a mediation communication. The mediation occurred on April 4, 2014 and ended on that date. Mr. Stern's email admits that he had no basis for bringing this action against Mr. Adamson and his only basis for continuing it is what he contends was "reprehensible and unethical"<sup>1</sup> conduct at the mediation. See attached Appendix A.

That is not a mediation communication. His admission is just that – an admission. If his email reiterated an admission that occurred at the mediation, i.e. something like: "At the mediation I admitted that I filed a frivolous matter against you, but that was only to try and reach a settlement," then that could be inadmissible. But admitting he has no basis for his claims, except for what occurred

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<sup>1</sup> Ironically, the same email claims he believes in "civility."

RESPONSE TO MOTION IN LIMINE - 1  
Cause No. 10-23826

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1 during a mediation the parties attended two months after he brought this matter, is  
2 not a mediation communication.<sup>2</sup>

3 The debtor's motion also includes statements made by Mr. Adamson in prior  
4 pleadings that neither he nor Mr. Jones have sought money from the debtor since  
5 the quiet title case was filed save for sanctions for frivolous pleadings. Noting that  
6 Mr. Adamson and Mr. Jones have threatened and demanded sanctions, is not a  
7 waiver of the mediation privilege. And demanding or threatening sanctions is  
8 obviously not a violation of Code Section 524. A discharge is not a license to bring  
9 frivolous lawsuits in the future.

10 Finally, whatever Mr. Stern thinks occurred at the mediation – and it remains  
11 a mystery to the undersigned - (1) could not, as a matter of law violate Code Section  
12 524 because debtors can always agree to repay a discharged debt under 11 USC  
13 524(f), and (2) statements at mediation cannot be used to establish liability for any  
14 claim, existing or in the future, under LBR 9047(b). Thus, even in the worst case  
15 scenario – i.e. if Mr. Adamson and Mr. Jones, while being sued for allegedly trying to  
16 collect a discharged debt, nonetheless specifically demanded that debtor repay a  
17 discharged debt – they cannot be liable for that. It never happened, but would in any  
18 event merely be a mediation request for debtor under 11 USC 524(f) to voluntarily  
19 agree to repay a debt, and would in any event be protected by LBR 9047(b). Debtor  
20 was represented by two lawyers at the mediation and could just say no. That she

25 <sup>2</sup> Moreover, even if disclosing Stern's allegation about the mediation could be a waiver, the party  
26 prejudiced by the waiver is Mr. Adamson. Thus, Mr. Adamson would be the only party with the right  
to disclose what actually happened in order to show it was not "reprehensible and unethical." See  
RCW 7.07.040.

RESPONSE TO MOTION IN LIMINE - 2  
Cause No. 10-23826

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instead is now pursuing Mr. Adamson<sup>3</sup> only based on what occurred at that mediation is absurd.

## CONCLUSION

Debtor brought this matter claiming Jones and Adamson were defending the state court case as a pre-text to collect a discharged debt. She claimed Jones was required to just give up his ownership interest in the Hunts Point property. Debtor took the same claim to trial in state court and lost, with the judge ruling that Jones is an owner and has a legitimate interest in remaining on title because he is still liable for the mortgage. (Ex. A-17) That ruling is binding on this Court, and mandates dismissal of this matter, even without Mr. Stern's admission and even without going through an evidentiary hearing.

DATED this 17th day of June, 2014

JAMESON BABBITT STITES  
& LOMBARD, P.L.L.C.

By /s/ Matt Adamson  
Matt Adamson, WSBA #31731  
madamson@jbsl.com  
Attorneys for Matt Adamson

/s/ Michael P. Harris  
Michael P. Harris  
Attorney at Law  
WSBA# 13506  
Attorney for Shawn Casey Jones

<sup>3</sup> Notably, Mr. Adamson is a defendant in this frivolous matter, has served a motion for sanctions on debtor that she has helpfully included in her exhibits (Ex. D-39,40), and is not a creditor of debtor, so he has every right to demand anything and everything from debtor to settle this matter.

RESPONSE TO MOTION IN LIMINE - 3  
Cause No. 10-23826

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**CERTIFICATE OF SERVICE**

I, Laura Kondo, declare as follows:

1. I am a legal assistant with the law firm of Jameson Babbitt Stites & Lombard, PLLC, over the age of 18 years, a resident of the State of Washington, and not a party to this matter.

2. On June 17, 2014, I caused the foregoing Response to Motion in Limine to be served upon counsel for the Debtor via ECF at the following addresses

Marc Stern and Susan Fullmer  
1825 NW 65<sup>th</sup> St.  
Seattle, WA 98117

I declare under penalty of perjury of the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 17, 2014 at Seattle, Washington.

/s/ Laura M. Kondo

RESPONSE TO MOTION IN LIMINE - 4  
Cause No. 10-23826

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## Matt T. Adamson

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**From:** Marc S. Stern [marc@hutzbah.com]  
**Sent:** Thursday, May 22, 2014 2:25 PM  
**To:** Matt T. Adamson  
**Cc:** Susan Fullmer (susan@fullmerlaw.info); 'Michael Harris'  
**Subject:** RE: Merceri

What we are doing is withdrawing without prejudice the § 524 motion and striking the hearing. Had I known that Mr. Harris was representing Mr. Jones, I would have dealt with him. That is all that I am doing. If we decide to again seek relief against you and/or Mr. Jones, we will start it again from scratch.

At this point I do not see any claims against you that I am willing to sign on to, except for what I personally consider your reprehensible and unethical conduct during the mediation. And, you do know what that is. I know that the mediation rules prohibit disclosure, at least at this point. If I decide that something else needs to be brought against you, I will write you before I start something. This will be a courtesy because I believe in civility.

In the interim, I will have my secretary upload an Order for dismissal without prejudice.

MSS

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Marc S. Stern  
1825 NW 65th St.  
Seattle, WA 98117  
206-448-7996

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Pursuant to U.S. Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

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App. A.